International Journal of Education and Science Research Review
E-ISSN 2348-6457
June- 2017, Volume-4, Issue-3
P-ISSN 2349-1817
www.ijesrr.org
Email- editor@ijesrr.org

P.I.L in the USA: Socio-Legal contextualisation

Shubha Sinha

Associate Professor, Department of Political Science

Shyama Prasad Mukherji College

University of Delhi

Abstract

PIL or public interest litigation emerged courtesy the legal exposition of the Supreme Court of the USA which devised this unheard mechanism of redressing many upcoming/ existing socio-cultural unjust practices in the society which went against the basic/ fundamental constitutional ethos of justice. The contextual interpretation is based on the landmark judgements and available literature on textual interpretation of the same.

"Public Law Litigation refers to the practice of lawyers in the United States seeking to precipitate social change through court-ordered decrees that reform legal rules , enforce existing laws , and articulate public norms ."[1]

The United States is regarded as the birthplace of the modern conception of 'Public Interest Litigation' where it is popularly called as "*Public Interest Law "*. In the U.S. this branch of law is subsumed under the term "public interest law". Though the credit for coining the phrase goes to Professor Abram Chayes of the Harvard Law School who coined the phrase "public law litigation" in 1976, to refer to the practice of lawyers in the United States seeking to precipitate social change through court-ordered decrees that reform legal rules, enforce existing laws, and articulate public norms.[2] In other words it is an effort to provide legal representation to groups and interests that have been unrepresented or underrepresented in the legal process. These include the disadvantaged and poor, who cannot afford costs relating to legal procedure

Scholars frequently date the emergence of Public Litigation Law to the celebrated campaign that resulted in the decision in Brown v. Board of Education. Brown provided insight to a generation of law practitioners

who saw law not only as a foundation of liberation but also a transformation mechanism for marginalized groups. At the same time Brown also encouraged Courts, mostly federal, became involved in a wide variety of socio-political issues, which ranged from contraception and abortion, employment ,housing discrimination, voting and apportionment, prison conditions and environmental regulation[3]The decision which was taken by the judiciary in this case was prospective and its intent was correcting the governmental administration and the judges along with the political parties played a crucial role. \So Brown v Board of Education played an inspirational role and it not only liberated the marginalized group it also transformed them .

But the institutionalization of "Public Interest Law" began with the establishment of *The Counsel for Public Interest Law* founded by the Ford Foundation in USA, 1976. The Counsel for Public Interest Law in its report of Public Interest Law, defined[4]

"Public Interest Law " is the name that has recently been given to efforts to provide legal presentation to previously non-represented groups and interests. Such efforts have been undertaken in the recognition that the ordinary marketplace for legal services fails to provide such services to significant interest. Such groups and interests include the poor, environmentalists, consumers, radical and ethnic minorities and others.

Nevertheless the use of the term 'Public interest Law' to cover the great variety of efforts to provide legal representation on behalf of marginalized people in the legal institutional sphere possibly goes back to the mid-1960s. But in the field of human institution its roots can be traced back to 1876, when the first salaried legal aid officer was established in New York City for the legal assistance to recently arrived immigrants then, in the USA. [5]

Standing or Locus Standi has been a key arena between the traditional and new form of PIL The term locus standi has not been mentioned explicitly in the American Constitution Locus Standi in USA for all purposes implies right of any person or party to raise a legal petition in the Court of Law .It was on the basis of Article III Section 2 of the American Constitution that this power was extended by the judiciary

and covers all the cases in which the law and equality under the Constitution and American law is in question With change in socio-economic and political conditions traditional outlook of locus standi was liberalized and the US Supreme Court began liberalizing the rule for procedures in some cases in order to provide justice

.

The Supreme Court created a history and relaxed the procedural law which later became a precedent and since then has provided justice to the unrepresented , poor and the disadvantaged .But till 1969 the growth of PIL was quite slow .It started blooming after 1969 . Till 1969 Public Interest Law was limited to American Civil Liberties Union , The National Defence and Education Fund , Lawyers Committee for Civil Rights ,Public Interest Research Groups , Centre for Law and Social Policy National Committee Against discrimination in Housing etc The concern of Public Interest Law was primarily civil rights and liberty ,political issues and issues relating to poor and discriminated

The diverse movements like the Civil Rights Movement and Legal Aid provided ideological support. In 1876 the first legal aid office was set up in New York on the basis of the famous judgment given in Gideon v. Wainwright which provided the very foundation on which the concept of PIL was formed ..Upon refusal by the Florida High Court to appoint a counsel Clarence Earl Gideon had dispatched a written scrawl letter informing the Apex Court of United States in which he claimed himself to be a pauper and requested the Court to hear and act on his petition as the refusal was against the very spirit of the Constitution In this case it was felt that it is imperative to provide legal aid to people who were disadvantaged

The organized Legal Aid movement started with the systematic efforts to represent the unrepresented interest and initiated a new concept of salaried staff of attorneys to see such clientele. From its beginning to first half of nineteenth century, legal aid committed to equal access to justice for the poor and was heavily influenced by the racial exclusivity of U.S. immigration policy, which meant that legal aid services were directed to "white" southern and eastern European immigrants living in major urban “ghettos.” Rather than emphasizing the distinctiveness of immigrant grievances, the early legal aid project was defined by the goal of promoting individual assimilation: immigrant clients received free services as a means of

counteracting notions of class-divided justice and facilitating the process of Americanization. [6] But unfortunately this Americanization process had little space for Asian and Mexican immigrants.

Another predecessor of Public Interest Law was a popular forum called Administrative Agencies (AA) which was considered as the major platform to represent public interest in the USA.[7] They were referred to as the fourth branch of state affairs, the Executive, Legislative and Judiciary and were concerned as instruments to regulate the powerfully organized private sectors. Indeed the function of the Administrative Agencies was to restructure the administration in such a way so as to better serve the interest of the public and to discharge a variety of functions including the protection of the consumer interests and environment. But by the 1960s, Administrative Agencies became ineffective due to its failure in tacking necessary action to protect the public interest.

A public interest law firm is often seen as a profit oriented association of lawyers, like any other private law firm and are distinguished from private firms in that their primary mission is to assist people with particular cases rather than to make money.[8] During its initial phase, public interest law firms were created, founded, and remained largely directed by leaders of American business corporations, who practiced public interest law. They were tax-exempted entities and non profitable organizations of charitable nature. Such organizations were constituted with the object of general welfare of the people and charity purposes which were exempted from tax law under section (51)c of internal revenue code. The activity of business-sponsored Public Interest Law firms, against a background of long accepted concepts of charity, developed concepts for the practice of Public Interest Law more recently. It has not sought to derogate the contributions of business of American life. Generally, they were Independent Corporation under the supervision of a board to trustees, funded chiefly by foundation grants and contributions from public their charitable purpose was certified by the internal revenue service.

The period of the 1960s was remarkable in the history of public interest law in the US. By late 1960s a growing number of organizations formed exclusively to litigate issues as diverse as child care, prison reform, and clean sir, forced the services to come to grips with the question, when such litigation was in the public interest and thus to be recognized as charitable. Before 1969, the handful of major public interest

law centers in operations handled issues relating to civil rights, civil liberties and problems of the poor, blacks, poor people, social and political dissidents were their chief clientele and suits were their principal political tool.

Till 1969 PIL was uncomplicated ,petite , and of diminutive nature but now it has become introspective .The ambit of PIL has escalated encompassing varied diverse issues relating to Environment , Consumer Protection , Occupation ,Taxation Structure , Health Issues , Land and Energy , Media , Reforms relating to Education , women ,children , aged etc. PIL is being used by the lawyers , citizens , media , academicians etc for the correction of governmental maladministration .But Supreme Court in United States kept refusing many PIL without considering its merits[9] and it set limitation of traditional private law model on the matters pertaining to standing and class action

In the year 1970, the internal revenue services came to grips with the concept of public interest law, according to the available data by 1976 public interest law firms identified almost 600 attorneys in over 90 tax-exempt organizations across the country, which increased to 711 staff lawyers with 117 firms including those of public interest law firms. In 1974 congress created the independent legal services corporation. The original legal aid programme dealt with arbitrary landlords, impounded property and day to day problems of the poor. They had begun to sek larger remedies, law reforms and wanted to change the rules for eviction.

By the end of 1975 the universe of public interest law had expanded so that its spectrum of issues had come to conclude consumer protection, environmental protection, land and energy use, tax reform, occupational health and safety, health care, media access, corporate responsibility, education reform, employment benefits and manpower training. The range of clients embraced ordinary citizens, factory, farm or mine workers: women , children, elerderly prisoners, and mentally impaired. The tools it employs now include administrative agency actions, investigative research reports, arbitration and negotiation, public education campaigns and lobbying.

Another foundation of public interest Law was American Civil Liberties Union (ACLU). Founded in 1920 and respectively ACLU became an independent entity, was earlier known as the National Civil Liberty

Bureau. [10] In the years following World War I, America was gripped by the fear that the Communist Revolution that had taken place in Russia would spread to the United States. As is often the case when fear outweighs rational debate, civil liberties paid the price. Thousands of people were arrested without warrants and without regard to constitutional protections against unlawful search and seizure. Those arrested were brutally treated and held in horrible conditions.[11] During this time American Civil Liberties Union (ACLU) as one of the prominent organizations fought against atrocities. One of the ACLU's earliest battles was the Scopes Trial of 1925, Relating to a law banning academic freedom. Yet another case was After the Pearl Harbor attack, President Franklin Roosevelt ordered all people of Japanese descent, most of whom were American citizens, be sent to "war relocation camps." Eventually more than 110,000 Japanese Americans were sent to these internment camps. The ACLU, led by its California affiliates, stood alone in speaking out about this atrocity and protection of civil liberty.

The role of Association for the Advancement of Colored People (NAACP) was no less important and was founded in 1909. In 1909, the NAACP commenced what has become its legacy of fighting legal battles to win social justice for African-Americans and indeed, for all Americans.[12] For the first two decades of its existence, the NAACP was involved in very little litigation because the NAACP originally thought of itself as educational and lobbying groups and not as a legal action effort.[13] Later on it came to prominence specially under the leadership of Charles Hamilton Houston and his student and protégée, Thurgood Marshall. Houston was appointed in 1935 to be the first Special Counsel of the NAACP. Often referred to as the *"Moses of the civil rights movement,"* [14] Houston was the architect and chief strategist of the NAACP's legal campaign to end segregation.

The post 1960 era witnessed founding of the vast majority o f organizations especially in the late 1960s or 1970s and 1980s. It is worth mentioning here the contribution of private business legal law firms like Pacific legal foundation (PLF), was established for the purpose of defending and promoting individual and economic freedom in the courts.[15] This organization challenged the governmental growth and governmental controls which were detrimental to the free enterprise system of the US. Interestingly almost

all the leaders of these organizations have had considerable experience working in public interest law.[16] Another such foundation known as mountain states legal foundation (MSLF) came to prominence in matters relating to public interest law. Mountain States Legal Foundation (MSLF) established in 1977 and was dedicated to individual liberty, the right to own and use property, limited and ethical government, and the free enterprise system.[17]

Since the first use of the Phrase "public law litigation" in 1976, by Professor Abram Chayes of the Harvard Law School to refer to the practice of lawyers in the United States seeking to precipitate social change through court-ordered decrees that reform legal rules, enforce existing laws, and articulate public norms,[18] much water has flown in the river Mississippi. In response to the changed social, socio-economic and political environment, the American Supreme Court steadily liberalised strict procedural rules in appropriate cases. The issues within the sway of public interest litigation in the US concerned not so much state repression or Government lawlessness but rather civil participation in Governmental decision making. The Public Interest Law emerged as a means to defend the rights of minorities and weaker sections in society like women, children, the specially abled, the poor, the consumer, ordinary citizen, the public and the environmentalists etc. The contemporary public interest legal law movement is not far from that explanation. Undoubtedly most of the USA's leading public interest law organizations have grown substantially in size and influence since their formation beginning in the late 1960s. Groups that started with a few idealists, typewriters, and a Xerox machine are now multimillion dollar institutions at the forefront of social reform. [19] Yet as the capacities of public interest legal organizations have increased, so, too, have many of the problems they seek to address. The growing conservatism of the public and the courts, and the increasing competition among reform-oriented groups have also added new challenges. The movement has made enormous progress, but its aspirations far exceed its achievements.

References

1. Chayes, Abraham, 1976, The Role of the Judge in Public Law Litigation, 89 Harvard Law Review, p 1281.
2. Hershkoff, Helen, 2001, Public Interest Litigation: Selected Issues and Examples, World Bank, Working Papers- Governance, Corruption, Legal Reform.

3. Ibid

4. Chandra ,J ,2005, Public Interest Litigation and Environmental Protection, New Delhi, Deep and Deep Publications, pp 55-56.

5. Batman, Felice, 2015, Women and Justice for the Poor, Cambridge, Cambridge University press, p 28.

6. Cummings, Scott L, 2008, The Internationalisation of Public Interest Law, Duke Law Journal, vol.57, No. 4, p 898-99.

7. Rockwell, Stephen, J,2010, Indian Affairs and the Administrative State in the Nineteenth Century, New York: Cambridge University press, p -21.

8. Harmon, Wilson Steven, 2012, The U.S Justice System: Law and Constitution in early America , California,ABC-CLIO, LLC, p 293.

9. Warth V Seldon,1975, Sierra Club vs Morton,405 US 727 (1972).

10. Kutulas Judy, 2006, The American Civil Liberties Union and the Making of Modern Liberalism, 1930-1960, USA: University of North Carolina Press, p 17.

11. American Civil Liberties Union Documents,2015,ACLU History: Some Highlights Why We Do What we Do How We Do It, available at URL: https://www.aclu.org/print/node/4441.

12. NAACP official online document, 2009-2016, Legal History, available at URL: http://www.naacp.org/pages/naacp-legal-history.

13. Jain, Sampath,2003, Public Interest Litigation,New Delhi, Deep and Deep Publications p -37.

14. NAACP official online document,2009-2016, Legal History, available at URL: http://www.naacp.org/pages/naacp- legal-history .

15. Zumbrun, Ronald A,2004," Life, Liberty and Property Rights" in bringing Justice to the People; The Story of the Freedom- Based Public Interest Law Movement, Lee Edward's,(ed.) Washington DC, Heritage Books, p 41-42.

16. Rhode, Deborah L, 2008, Public Interest Law: The Movement at Midlife, Stanford Law Review, vol.60, No. 6, pp. 2027-2084.

17. Annual Report 2014, Mountain States Legal Foundation, p 2, available at URL: https://www.mountainststeslegal.org/docs/ default-source/Annual-Reports/2014-annual-report-pdf?sfvrsn=o

18. Hershkoff, Helen, Public Interest Litigation: Selected Issues and Examples, available at URL: http://siteresources.worldbank.org/ INTLAWJUSTINST/Resources/ publicinterestLItigstion%5B1%5D.pdf.

19. Rhode,Deborah L, 2008, Public Interest Law: The Movement at Midlife, Stanford Law Review, Vol.60, No. 6,pp 2027-2084.